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Effects of armed conflicts on treaties

Comments and observations received from international organizations

Addendum

II. Comments and observations received from international organizations

C. International Monetary Fund*

In the context of its study of draft articles regarding the effects of armed conflicts on treaties, the International Law Commission has requested information from international organizations about their practices with regard to the effects of armed conflicts on treaties involving them. Currently, the definition of "treaty" under draft article 2 excludes treaties between States and international organizations and between international organizations, and the question of the inclusion of treaties involving international organizations has been left in abeyance until a later stage of the Commission's work on the overall topic.

The International Monetary Fund (IMF) has no experience with respect to the effects of armed conflicts on treaties between IMF and States or international organizations. However, IMF has ample experience with respect to the effects of armed conflicts on IMF members under its Articles of Agreement.[1] For purposes of analysing and distilling this experience, it is important to recognize two general principles.

First, armed conflicts do not affect an IMF member's membership status unless, as a result of the conflict, the international community no longer recognizes

* The submission of the International Monetary Fund was received after the issuance of document A/CN.4/592.

[1] The Articles of Agreement are available on the official website of IMF (http://www.imf.org/external/pubs/ft/aa/index.htm).

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the member as a "country" within the meaning of the Articles of Agreement (e.g., due to dissolution or annexation).

Second, even if the armed conflict does not change the status of a member as a country, it may have an impact on the member's Government and, thereby, the ability of the member to exercise its rights and obligations under the Articles.

Armed conflicts and International Monetary Fund membership

Unless an armed conflict affects a member's status as a country within the meaning of the Articles of Agreement, the country will remain a Fund member. Thus, an IMF member under military occupation by another country retains its membership in IMF. For instance, when Iraq was occupied in 2003, it retained its IMF membership. Similarly, when Iraq occupied Kuwait in 1990-1991, Kuwait retained its IMF membership. Moreover, when, because of an armed conflict, a part of an IMF member secedes from an IMF member and that secession is recognized by the international community, the IMF member retains its IMF membership and the seceding country would need to apply for IMF membership (as an independent country)[2] if interested in IMF membership. For instance, in 1971, following an internal armed conflict, Bangladesh seceded from Pakistan, applied for IMF membership and subsequently became an IMF member in 1972. Pakistan retained its IMF membership.

However, if as a result of an armed conflict, the international community has formed a view that a country no longer exists, membership is terminated. Thus, IMF membership would terminate if the IMF member ceased to exist as a result of either annexation or dissolution. With respect to dissolution, a recent example is the dissolution of the Socialist Federal Republic of Yugoslavia. Upon the Fund's determination of the dissolution of that country in 1992 (which took into account the views of the international community), its membership in the Fund terminated. The Fund also determined (again taking into account the views of the international community) that there were five successor countries to the Socialist Federal Republic of Yugoslavia, all of which were eligible to succeed to its membership in the Fund.[3]

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[2] The country would need to apply for IMF membership under article II, section 2, of the Articles of Agreement and to meet the IMF membership criteria, which in IMF practice have been: (a) the applicant is a "country", (b) the country is in formal control of its external relations, (c) the country is willing to perform the obligations of membership as set out in the Articles and (d) the country is able to perform the obligations of membership as set out in the Articles (see Joseph Gold, "Membership and nonmembership" (Washington, International Monetary Fund, 1974, pp. 41-42).

[3] Croatia (on 15 January 1993), Slovenia (on 15 January 1993), the former Yugoslav Republic of Macedonia (on 21 April 1993), Bosnia and Herzegovina (on 20 December 1995), and the Federal Republic of Yugoslavia (on 20 December 2000) succeeded to the membership in the Fund of the former Socialist Federal Republic of Yugoslavia, in each case, effective 14 December 1992. See Francois Gianviti, "Some specific legal features of the International Monetary Fund", in *Current Legal Issues Affecting Central Banks*, vol. 4, 1997, pp. 1-15.

Effects of armed conflicts on the Government of a member of the International Monetary Fund

IMF members exercise their membership rights through their Governments, and armed conflicts may affect such Governments. While countries — not Governments — are IMF members (see article II of the Articles of Agreement), a member's relations with IMF are exercised through its Government. Accordingly, only the Government of a member with which IMF can carry on its activities may exercise its membership rights (e.g., use of Fund resources). As a result of an armed conflict, there may be situations where a determination is made that there is no Government that can exercise the rights of a member. This situation existed for a period following the occupation of Iraq in 2003. Moreover, since October 1992, IMF has concluded that there is no effective Government in Somalia with which IMF could carry on its activities with Somalia. In some cases, the Fund may determine that, as a result of the conflict, a Government continues to exist, but that it exists in exile. Following a coup in 1991 in Haiti, the IMF Board of Governors decided (again, reflecting the views of the international community) to deal with the authority in exile, rather than the authority in effective control, as the member country's Government. Where an armed conflict leads to an occupation of a member and, as a result, there is no longer an internationally recognized Government, the occupying Power is responsible for the performance of the occupied member's obligations under the Articles of Agreement.[4] Consistent with the approach that it takes with respect to the status of a member as a "country", the above determinations by IMF as to whether to recognize a Government is largely informed by the views of the international community. If there is no clear guidance from the international community, IMF staff will determine whether a majority of IMF members (in terms of voting power) recognize or deal with the authority as a Government in their bilateral relations.[5]

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[4] See Article XXXI, section 2 (g), of the Articles of Agreement.

[5] See Ramanand Mundkur, "Recognition of Governments in international organizations, including at the International Monetary Fund", *Current Developments in Monetary and Financial Law*, vol. 4 (2005), pp. 77-97.

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Responsibility of international organizations

Comments and observations received from international organizations

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I. Introduction

1. At its fifty-fifth session, the International Law Commission asked the Secretariat to circulate, on an annual basis, the portions of its report relevant to the topic "Responsibility of international organizations" to international organizations for their comments.[1] Pursuant to that request, selected international organizations were invited to submit their comments on the relevant portions of the Commission's 2003, 2004, 2005, 2006 and 2007 reports.[2] Most recently, the Commission sought comments on chapter VIII of its 2007 report[3] and on the issues of particular interest to it noted in paragraphs 29 and 30 of that report.[4]

2. The comments received from international organizations as at 18 March 2008 are reproduced in document A/CN.4/593. The present addendum contains written comments received from the International Organization for Migration on 15 April 2008.

II. Comments and observations received from international organizations

A. Draft article 43 — Ensuring the effective performance of the obligation of reparation

International Organization for Migration

While there is no question that inclusion of draft article 43 is justified, its precise placement should be reconsidered. Given the structure of the draft articles, it would be more logical to make it the second or third paragraph of article 34.

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[1] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 52.

[2] The written comments of international organizations received prior to 1 May 2007 are contained in documents A/CN.4/545, A/CN.4/556, A/CN.4/568 and Add.1, and A/CN.4/582.

[3] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 10* (A/62/10).

[4] Paragraphs 29 and 30 of the 2007 report read as follows:

> 29. The Commission would welcome comments and observations from Governments and international organizations on draft articles 31 to 45, in particular on draft article 43, relating to an obligation of members of a responsible international organization to take, in accordance with the rules of the organization, all appropriate measures in order to provide the organization with the means for effectively fulfilling its obligation to make reparation.
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> 30. The Commission would also welcome views from Governments and international organizations on the two following questions, due to be examined in the next report:
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> (a) Article 48 on responsibility of States for internationally wrongful acts provides that, in case of a breach by a State of an obligation owed to the international community as whole, States are entitled to claim from the responsible State cessation of the internationally wrongful act and performance of the obligation of reparation in the interest of the injured State or of the beneficiaries of the obligation breached. Should a breach of an obligation owed to the international community as a whole be committed by an international organization, would the other organizations or some of them be entitled to make a similar claim?
>
> (b) If an injured international organization intends to resort to countermeasures, would it encounter further restrictions than those that are listed in articles 49 to 53 of the articles on responsibility of States for internationally wrongful acts?

B. Specific issues raised in chapter III.D of the report of the International Law Commission on the work of its fifty-ninth session

1. Invocation of responsibility by an international organization in case of a breach by another organization of an obligation owed to the international community as a whole

International Organization for Migration

Article 48 on responsibility of States for internationally wrongful acts could be transposed, a priori, to the draft articles on the responsibility of international organizations; however, it would be helpful if the Commission illustrated its point with a few specific examples.

2. Resort to countermeasures by an international organization

International Organization for Migration

The possibility for an organization to resort to countermeasures should be subordinated to the existence of such a right in its constitutive instrument and other explicit norms adopted by its governing body. Resort to the concept of implicit powers to justify the application of countermeasures could lead to abuses, unless the existence of those particular countermeasures in international customary law is recognized and their invocation has been extended to international organizations.